

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
ROBERT W. SULLIVAN, )  
d.b.a. Crown Cedar Products, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 77-78

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

PER W. A. GISSBERG:

A formal hearing on an alleged violation of respondent's visual emission regulation was held in Seattle, Washington on October 28, 1977 before Board members W. A. Gissberg, presiding, Chris Smith and Dave J. Mooney.

Mrs. Robert Sullivan appeared for appellant; Keith D. McGoffin for respondent.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Pollution Control Hearings

1 Board makes these

2 FINDINGS OF FACT

3 I

4 Respondent, pursuant to RCW 43.21B.260, has filed with this Board a  
5 certified copy of its Regulation I containing respondent's regulations  
6 and amendments thereto.

7 II

8 Appellant and respondent have been struggling since 1972 to achieve  
9 compliance with respondent's regulations applicable to the burning of  
10 appellant's wood waste products. Having been served with 12 Notices of  
11 Violation of respondent's outdoor burning regulations between September,  
12 1972 and April, 1975, appellant proposed to solve its problems by the  
13 installation of an "Olivine Smokeless Burner" for wood waste. Although  
14 one of respondent's experts believed and told appellant that the design  
15 of the proposed facility was wrong in several respects, appellant was  
16 certain that the construction would meet respondent's requirements in  
17 controlling air contaminants. Accordingly, respondent, on October 30,  
18 1975, granted permission for appellant to construct its "smokeless" wood  
19 waste burner but cautioned appellant that:

20 . . . The Agency has prepared a set of criteria for the con-  
21 struction of a wood waste burner that will meet Regulation I.  
22 The burner you propose to install is somewhat similar to these  
23 design criteria, but lacks several important aspects of them.  
24 Additionally, the Agency is familiar with the operation of a  
25 burner of similar construction that operated in this area,  
26 and that unit lasted only a matter of months until it failed  
27 structurally. . .

28 . . . She [Mrs. Sullivan] . . . stated that Crown Cedar Products  
29 has an iron clad guarantee with the supplier of the unit that

30 FINAL FINDINGS OF FACT,  
31 CONCLUSIONS OF LAW AND ORDER

1 the unit will meet all the requirements of Regulation I. . . .<sup>1</sup>  
2 (Emphasis added.)

3 III

4 Appellant completed the construction of its burner on or about  
5 February 1, 1977 and submitted its Notice of Completion on April 11,  
6 1977.<sup>2</sup> Accordingly, on April 18, 1977, two of respondent's inspectors  
7 verified by their field inspection that the appellant had completed its  
8 construction in accordance with the approved plans (except for the fan  
9 size), witnessed the burner in operation, took photos and movies and  
10 observed the emission of smoke from the burner for six consecutive  
11 minutes which was of an opacity of between 80 to 100 percent, or a  
12 Ringelmann 4 to 5.

3 IV

14 Respondent's Regulation I, Section 9.03(b), makes it unlawful to  
15 cause or allow an emission of an air contaminant such as described in  
16 Finding of Fact III. Accordingly, respondent issued its Notice of  
17 Violation and imposed a civil penalty in the sum of \$250.00, to which  
18 appellant appeals.

19 V

20 Appellant presented no evidence challenging the accuracy of the  
21 April 18, 1977 observation, but rather presented evidence to show that:

- 22 1. Efforts are being made to require the manufacturer of the  
23 facility to make corrections thereto;

24  
25 1. Respondent's Exhibit R-2(b).

26 2. Respondent's Exhibit R-2.

2. It is difficult for a business such as that operated by appellant to comply with respondent's regulations at all times;

3. Respondent's "readings" and regulations are unfair because appellant's burner does not smoke much of the time; and

4. Appellant expects cooperation, assistance and communication from respondent.

#### VI

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

#### CONCLUSIONS OF LAW

##### I

Appellant violated respondent's Regulation I, Section 9.03(b).

##### II

The respondent has shown extreme restraint in not having imposed civil penalties on 14 other occasions of observed violations occasioned by the operation of appellant's silo burner.<sup>3</sup> The civil penalty of \$250.00 should be affirmed.

##### III

While such industries like that of appellant do have particular difficulty in attaining and meeting respondent's air pollution standards, most have done so. Some of the industry difficulties are unavoidable.

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3. Respondent's Exhibit R-1.

1 Those are described in Section 9.16 of respondent's Regulation I, the  
2 provisions of which, if correctly followed, may under limited circumstances,  
3 excuse what would have otherwise have been a violation.

4 IV

5 Any Finding of Fact which should be deemed a Conclusion of Law  
6 is hereby adopted as such.

7 Therefore, the Pollution Control Hearings Board issues this

8 ORDER

9 The Notice of Violation and Civil Penalty are affirmed.

10 DONE at Lacey, Washington, this 4<sup>th</sup> day of November, 1977.

11 POLLUTION CONTROL HEARINGS BOARD

12 

13 W. A. GISSBERG, Chairman

14 

15 DAVE J. MOONEY, Member

16 

17 CHRIS SMITH, Member